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7 CARLOS A. HAWTHORNE,  
8 Plaintiff,  
9 v.  
10 A YANEZ, et al.,  
11 Defendants.

Case No. [17-cv-04960-HSG](#)

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**ORDER DENYING FOURTH  
REQUEST FOR EXTENSION OF TIME  
TO FILE SECOND AMENDED  
COMPLAINT**

18 Re: Dkt. No. 69

19 Plaintiff, an inmate at San Quentin State Prison (“SQSP”) has filed a *pro se* civil rights  
20 action under 42 U.S.C. § 1983, alleging that SQSP prison officials have violated his constitutional  
21 rights. Now pending before the Court is Plaintiff’s request for 120-day extension of time to file a  
22 second amended complaint and/or an opposition to the summary judgment motion, up to and  
23 including April 21, 2022.

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**BACKGROUND**

25 On November 4, 2020, the Court screened the amended complaint, identified the  
26 cognizable claims and ordered service on the relevant defendants, dismissed certain other claims  
27 with prejudice, and granted Plaintiff leave to amend two claims. The Court specifically instructed  
Plaintiff that he should not change the nature of this suit by alleging new, unrelated claims in the  
second amended complaint. *See generally* Dkt. No. 30. The Court granted Plaintiff three  
extensions of time to May 21, 2021 to file a second amended complaint. Dkt. Nos. 34, 40, 42.  
Plaintiff did not file a second amended complaint by May 21, 2021. Since then, the parties have  
stipulated to the voluntary dismissal of defendant Deal, Dkt. Nos. 62, 63; defendant Swensen has  
filed a motion to dismiss, Dkt. No. 66; and defendants Czakjowski, Davis, Fonesca, Hagens,  
Thomas, and Yanez had filed a motion for summary judgment, Dkt. No. 77. Plaintiff’s opposition

1 to the motion to dismiss is due January 7, 2021; and his opposition to the summary judgment  
2 motion is due on January 10, 2021.

### 3 DISCUSSION

4 Now pending before the Court is Plaintiff's request for 120-day extension of time to file a  
5 second amended complaint and/or an opposition to the summary judgment motion, up to and  
6 including April 21, 2022. Plaintiff states that an extension of time is necessary because he is  
7 proceeding *pro se*; he suffers from a medical condition that prevents him from being able to  
8 concentrate; he has a learning disability and is mobility impaired; he has attended special  
9 education programs; he relies on self-help books to prepare his motions; he is completely devoid  
10 of hearing; he relies on typed and written notes for effective communication; and he is a patient in  
11 SQSP's Mental Health Program. Dkt. No. 69-1 at 1-2.

12 The Court DENIES Plaintiff's request for a fourth extension of time to file a second  
13 amended complaint. Although, in general, leave to amend a complaint shall be freely given when  
14 justice so requires, leave need not be granted where the amendment of the complaint would cause  
15 the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or  
16 creates undue delay. *See Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994). A  
17 district court's discretion to deny leave to amend is particularly broad where the plaintiff has  
18 previously filed an amended complaint. *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir.  
19 2003); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). In addition, a late amendment to  
20 add a new theory, when the facts and the theory have been known to the party since inception of  
21 the action, are ““not reviewed favorably.”” *San Francisco Herring Ass'n v. United States Dep't of  
22 the Interior*, 946 F.3d 564, 573 (9th Cir. 2019) (citation omitted) (upholding denial of leave to  
23 amend to add a count under the Declaratory Judgment Act, where prior complaints already  
24 requested declaratory relief, albeit not under the Declaratory Judgment Act). Here, Plaintiff was  
25 informed of the deficiencies in his amended complaint over a year ago. He has not explained why  
26 he requires a year and a half to prepare a second amended complaint. Moreover, Defendants have  
27 already filed dispositive motions in this action based on the amended complaint. Granting leave to  
28 file a second amended complaint at this late date would create undue delay and is likely to cause

1 Defendants undue prejudice. However, in the interests of justice, this denial is without prejudice  
2 to Plaintiff re-filing a motion for leave to file a second amended complaint. Any renewed motion  
3 for leave to file a second amended complaint must address whether a second amended complaint  
4 would cause Defendants undue prejudice or create undue delay and why Plaintiff was unable to  
5 file a second amended complaint earlier; and must be accompanied by a proposed second amended  
6 complaint so that the Court can determine whether it would be an exercise in futility to allow  
7 amendment. Failure to address the above issues and attach a proposed second amended complaint  
8 will result in a summary denial of a renewed motion for leave to file a second amended complaint.

9           The Court GRANTS IN PART AND DENIES IN PART Plaintiff's request for an  
10 extension of time to file his oppositions to the pending motion to dismiss and pending summary  
11 judgment motion. The Court's review of the record indicates that, despite the limitations listed by  
12 Plaintiff, he has ably represented himself in this action. The Court therefore grants Petitioner an  
13 extension of time to February 18, 2022 to file his oppositions to defendant Swensen's motion to  
14 dismiss, and to defendants Czakjowski, Davis, Fonesca, Hagens, Thomas, and Yanez's motion for  
15 summary judgment. Defendants shall file a reply brief in support of their respective dispositive  
16 motions no later than 14 days after the date the relevant opposition is filed. Both motions shall be  
17 deemed submitted as of the date the reply brief is due. No hearing will be held on either motion.

## 18           CONCLUSION

19           For the reasons set forth above, the Court ORDERS as follows.

20           1.       The Court DENIES without prejudice Plaintiff's request for a fourth extension of  
21 time to file a second amended complaint. Any renewed motion for leave to file a second amended  
22 complaint must address whether a second amended complaint would cause Defendants undue  
23 prejudice or create undue delay and why Plaintiff was unable to file a second amended complaint  
24 earlier; and must be accompanied by a proposed second amended complaint so that the Court can  
25 determine whether it would be an exercise in futility to allow amendment. Failure to address the  
26 above issues and attach a proposed second amended complaint will result in a summary denial of a  
27 renewed motion for leave to file a second amended complaint.

1       2. The Court GRANTS IN PART AND DENIES IN PART Plaintiff's request for an  
2 extension of time to file his oppositions to the pending motion to dismiss and pending summary  
3 judgment motion. By February 18, 2022, Plaintiff shall file his oppositions to defendant  
4 Swensen's motion to dismiss, and to defendants Czakjowski, Davis, Fonesca, Hagens, Thomas,  
5 and Yanez's motion for summary judgment. Defendants shall file a reply brief in support of their  
6 respective dispositive motions no later than 14 days after the date the relevant opposition is filed.  
7 Both motions shall be deemed submitted as of the date the reply brief is due. No hearing will be  
8 held on either motion.

9              This order terminates Dkt. No. 69.

10              **IT IS SO ORDERED.**

11              Dated: 12/20/2021

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13              HAYWOOD S. GILLIAM, JR.  
14              United States District Judge

United States District Court  
Northern District of California

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